

POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (PRESCRIBED SERVICES) (PROTECTED ADULTS) AMENDMENT REGULATIONS 2018

SSI 2018/28

1. The above Regulations (“the 2018 Regulations”) will be made by the Scottish Ministers in exercise of powers conferred by sections 94(1)(d) and 100(2)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). The 2018 Regulations are subject to the negative procedure in the Scottish Parliament.

Background

2. The Scottish Prison Service (“SPS”) has a Service Level Agreement (SLA) with the Samaritans to provide a prisoner listener service in Scotland’s public prisons. Samaritans have similar agreements in place with the operators of the two privately operated prisons in Scotland. The service is known as the prisoner listener scheme is well established and regarded as an effective service by SPS, that contributes to the SPS Suicide Prevention Strategy that aims to prevent prisoner suicide. The prisoner listener scheme has been in existence for many years, and pre-dates the introduction of the PVG Scheme.

3. Samaritans train and support a cohort of prisoners to act as Samaritans, or listeners, for other prisoners. It is a peer-to-peer support service. The trained prisoners provide emotional support and someone to talk to for prisoners who are in a very low state of mind.

4. Under section 94 of the 2007 Act, a protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care, prescribed health, support or prescribed welfare service. The Protection of Vulnerable Groups (Scotland) Act 2007 Prescribed Services (Protected Adults) Regulations 2010 (“the 2010 Regulations”) read with section 94(5) of the 2007 Act define a prescribed welfare service.

5. Under regulation 5 of the 2010 Regulations a prescribed welfare service is:

a welfare service that:

- (a) is provided in the course of work to one or more persons aged 16 or over,
- (b) is delivered on behalf of an organisation,
- (c) requires training to be undertaken by the person delivering the service,
- (d) has a frequency and formality attached to the service, and
- (e) either—
 - (i) requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, or
 - (ii) is personalised to an individual adult’s needs.

6. Samaritans offering a listening service and who are working in the community are doing regulated work on the basis of the above meaning of prescribed welfare service. As the service being provided in the prison estate is no different to that provided in the community, prisoners providing the prisoner listener scheme are also doing regulated work. Recipients of the service, that is their fellow prisoners, are protected adults while in receipt of the service.

7. Due to the longevity of the prisoner listener scheme it has not been usual practice to ask prisoners offering themselves as listeners to apply to join the PVG Scheme. It has emerged however that a significant number of current Prisoner Listeners may be barred from doing regulated work with protected adults under the 2007 Act. This is because some convictions, in particular convictions for many sexual offences, lead to individuals being automatically barred from doing regulated work. If this is the case, then the listeners must be removed from doing that work. The effect of their removal could threaten the viability of the prison listener scheme. That outcome could have an adverse impact on SPS and Ministers' priority of reducing suicide amongst prisoners.

Policy Objectives

8. Ministers have agreed that the position of prisoners providing peer-to-peer welfare services in relation to the PVG Scheme should be changed. The purpose of the 2018 Regulations is to amend the 2010 Regulations so that prisoners providing the prison listener scheme (which is a welfare service provided by one prisoner to another prisoner) are removed from the scope of a providing prescribed welfare service under the 2007 Act. This means that fellow prisoners who receive that service will no longer be protected adults. Consequently prisoners who might otherwise be or become barred from doing regulated work with protected adults can continue to participate in and provide the prisoner listener scheme. Prisoners are not generally protected adults as they do not fall within the definition of protected adult as a result of their imprisonment; it is therefore consistent that they do not fall within the definition of protected adults for the purposes of a welfare service provided to them by fellow prisoners. Prisoners would continue, however, to be protected adults if they receive any other type of care, prescribed health, or support service from any other person for example if they have dental treatment, or if they receive any other prescribed welfare service from a person who is not a fellow prisoner.

Consultation

9. Discussion has taken place between the Scottish Government, Disclosure Scotland, SPS, and Samaritans about the purpose of these Regulations. The changes to the law are supported by all. As the amendments affect only the arrangements between the SPS and Samaritans, wider consultation was not necessary.

Impact Assessments

10. There are no equality or children's rights issues associated with this Instrument.

Financial Effects

11. The Minister for Childcare and Early Years confirms that no Business and Regulatory Impact Assessment is necessary as the Regulations will have no financial effect on business in Scotland.

Scottish Government
January 2018